

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION NO.5150 OF 1983

For Approval and Signature

The Hon'ble Mr. Justice S.K. KESHOTE

-
1. Whether reporters of local papers may be allowed to see the judgment ?
 2. To be referred to the reporters or not ?
 3. Whether their lordships wish to see the fair copy of the judgment ?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950, or any order made thereunder ?
 5. Whether it is to be circulated to the Civil Judge?

RAMANBHAI MAGANBHAI PATEL
VERSUS
GUJARAT HOUSING BOARD & ORS.

Appearance:

MR. HB SHAH for Petitioner.
MRS. KETTY A MEHTA for Respondent No.1.
None present for Respondents No.2 & 3.

Coram: S.K. Keshote,
Date of decision:3.3.97

C.A.V. JUDGMENT

Heard learned counsel for the parties.

2. The petitioner, by this Special Civil Application, is challenging the order of respondent No.2, dated 17th July 1982, annexure 'D', and has further prayed for directing the respondents to allot flat No.868 in 154 MIG Scheme of Broach to the petitioner and to hand over vacant and peaceful possession of the said flat to him.

3. The petitioner has applied to the Gujarat Housing Board for allotment of flat in MIG scheme. The petitioner was informed by Housing Board vide letter dated 17th June 1982 that allotment of Flat No.868 to the petitioner has been cancelled as he owned another property and the said flat was allotted to respondent No.3 herein on 10th August 1982 and possession has also been handed over to the said person. The petitioner was not allotted the said flat on the ground that he has already acquired a tenement in his name and his wife in the Shreeji Nagar Cooperative Housing Society Ltd.

4. Regulation 31 of the the Gujarat Housing Board Act provides that allotment of houses shall be available to only those persons who do not already own a house or a flat or plot for construction of residential building. The learned counsel for the petitioner does not dispute the fact that the petitioner has already acquired house in the Shreeji Nagar Cooperative Housing Society, but he contended that the said accommodation has been acquired as the Housing Board has taken long time to allot flats. The learned counsel for the petitioner further admitted that the flat in dispute has been allotted to respondent No.3 who is in possession of the same. On the complaint received against the petitioner, the Board has called upon him to give explanation vide letter dated 24th may 1982. The petitioner has come up with the case before the Committee that he had entered into a Banakhat, i.e. Agreement to Sell of his house in Shreeji Nagar Cooperative Housing Society.

5. Taking into consideration the totality of the facts of this case, no relief can be granted to the petitioner as prayed in this Special Civil Application. In case the prayer of the petitioner is accepted and the respondent No.1 is directed to hand over the flat in dispute to the petitioner, or any other tenement, then it will be contrary to the Board's Regulations. Sitting under Article 226 of the Constitution of India, this Court will not perpetuate any illegality. Giving the directions of the nature as prayed, by this Court will

amount to asking the Board to act contrary to its own regulations, which is not permissible. This Court will not direct the authority to act contrary to the regulations.

6. In the result, this Special Civil Application fails and the same is dismissed. Rule discharged. Interim relief, if any, granted by this Court, stands vacated. No order as to costs.

.....

(sunil)